The Privileged Crime

POLICING AND PROSECUTING BIGAMY IN NINETEENTH-CENTURY NEW ZEALAND

IN 1849 HENRY SAMUEL CHAPMAN presided over Rice Owen Clark's bigamy trial, the first such case heard in the New Zealand Supreme Court. Chapman was incensed when the jury returned an acquittal. In long accounts of the trial written to his father in England and to the Governor in Auckland, he accused the police and prosecution of errors that no attorney's clerk or London policeman would have made. James Watkin, the Methodist minister who, with a 'conclave' of his church members, had told Clark and his future father-in-law, George Felgate, that the second marriage could go ahead, was also a target of his wrath. Chapman, who held strictly to the notion that 'the law of God is that "whom God hath joined no man shall put asunder"', claimed their advice had made 'Louisa Felgate a concubine, and her offspring bastards.'[1] Watkin's advice, Clark's trial and Chapman's outrage offer starting points for an examination of the policing and prosecution of bigamy in nineteenth-century New Zealand, described at the end of the century as the 'privileged crime'.[2]

Clark's attempt to determine whether he might marry a second time showed that he and Felgate, who had suggested Watkin's view be sought, were aware of the risk of a charge of bigamy. His defence was that his first marriage, to Ann Inglesby in England in 1835, was null and void as it was unconsummated. Ann, he said, 'was not a woman'.[3] However, the case against Clark failed, not because of his claim about Ann's physiology, but because the prosecution neglected to establish her existence and identity. Ann Clark, who sat in court throughout the trial, could not be called on to give evidence against her husband — the marriage had not been denied — but she could have been called for the purpose of identification. When this did not happen, the defence argued that there was no proof of the identity of the first wife. The jury 'gave the prisoner the benefit of the doubt and acquitted him'.[4]

A search of newspapers and court records shows that 71 persons were charged with bigamy in New Zealand between 1849 and 1900.[5] A variety of situations led to bigamous marriages. In the case of Ann Clark, she had left her husband in 1843, returned to England for several years, and arrived back in Wellington in April 1849, a month after Clark's second marriage,

confronted him and gave the police the information that led to his arrest. The jury was sympathetic to Clark and Louisa, who were well-known in the community, whereas rumours about Ann's infidelity repeated by Chapman damaged her reputation. Other, more common, reasons for bigamy were when men moved away from home, often in search of employment, and formed new relationships; when young women entered marriages they swiftly regretted, leaving rapidly and marrying a second time; and when deserted wives with children sought security with a new husband. Divorce and legal remarriage were rarely options for those who committed bigamy. The New Zealand courts did not provide for divorce hearings until 1868, the grounds were limited, more so for women than men, until 1898, and it remained an expensive process. Most bigamists had no grounds to petition for divorce; under the law at the time they were the party at fault.[6]

Bigamy raises a number of issues about personal, family and community expectations of marriage, and attitudes towards irregular marriage. It could be the result of a marriage breakdown, but this was not necessarily the case; some bigamists returned to their first marriages. It could involve deception, but again this was not always the case; at some bigamy trials second spouses, who could give evidence once the first marriage was proved, told the court they had been aware of the existing marriage. In this article I look at the differences between the rhetoric and law on bigamy and the realities of policing and prosecuting the offence evident in the Clark trial and persisting through the second half of the nineteenth century.

The conditions of a migrant society and attitudes towards marriage made the offence of bigamy difficult to police and prosecute. An acceptance of the social, personal and economic actualities of marriage and of marriage breakdown could lead the police to ignore evidence of bigamy. Magistrates readily discharged cases on technical grounds. Juries recommended leniency and found in favour of defendants despite clear evidence of their guilt. Judges recognized mitigating factors and rarely imposed long sentences on persons convicted of bigamy. And in the late 1870s, the comments of a judge on the role of the police in bringing bigamy to court led to an explicit statement by the government that bigamy investigations and prosecutions should proceed only if one of the parties involved complained. The state's willingness to be complicit in certain kinds of bigamous marriages was recognition that such marriages did not necessarily disturb the social or threaten the moral order.

Historians of other countries have pointed to the ambiguity in attitudes to bigamy over time. By the nineteenth century the secular courts in England and Wales had dealt with bigamy as a felony for nearly two hundred years.[7] However, Bernard Capp, in a study of bigamy in the late sixteenth and

seventeenth centuries, concluded that the law designed to suppress bigamy had fallen short: 'While a few unlucky offenders went to the gallows, a minority of dissident voices continued to challenge the very principle on which the law was founded and popular attitudes remained ambivalent.'[8] Lawrence Stone has argued that bigamy carried few risks of discovery or of serious punishment if exposed.[9] Even after Hardwicke's Act of 1753 supposedly made clandestine marriages more difficult and bigamous marriages easier to detect, it has been argued that the community continued to turn a blind eye to most bigamous marriages.[10] Ginger Frost, writing about bigamy cases in England 1760–1914, claims that 'All were convinced that happy bigamous marriages were preferable to miserable, legal ones.' Such marriages, in Frost's view, showed 'strong evidence of people's attachment to marriage'.[11] Beverley Schwartzberg, in a study of reports of bigamy among applications for pensions to the US government from wives of Civil War soldiers, has argued that 'Fluid marriages bespoke a world where acceptance of marriage as a fundamental legal, social, and cultural institution was accompanied by a pragmatic flexibility that demonstrated both respect for marriage and a willingness to adapt households to meet need and fortune.'[12] Joanna Bailey has maintained that English communities were not very concerned about bigamy and most censure fell on men who had deliberately duped their second wives.[13] When bigamy reflected a desire for, and resulted in, a stable marriage, society and the law could be tolerant.

The Law on Bigamy

In 1828 the British Parliament included bigamy in the Offences against the Person Act, defining it as the act of marrying a person during the life of a former husband or wife. Convicted bigamists could be transported for seven years or imprisoned for up to two years with or without hard labour. A defence to a bigamy charge could be mounted if a first spouse had been continuously absent for seven years and the defendant had no reason to think he or she were still alive. In 1861 the punishment was amended to penal servitude for a period of three to seven years or imprisonment for up to two years with or without hard labour.[14]

New Zealand legislated for colonial marriages from 1847, requiring one of the parties intending marriage to take an oath or make an affirmation 'that he or she believeth that there is not any impediment of kindred or alliance or other lawful hindrance to the said marriage'.[15] However, the British law on bigamy remained operative until the New Zealand Parliament passed a local Offences against the Person Act in 1867. This Act was closely modelled on the British legislation and made bigamy a felony liable to the same punishments.

As in Britain, exemptions were provided for any person marrying a second time whose spouse had been 'continually absent' for seven years and had not been known to be alive during that time, for persons who had gained a divorce or if a former marriage had been declared void by a competent court.[16]

In 1893 the Criminal Code Act extended the crime of bigamy to include any person who went through a form of marriage with someone they knew to be married and marriages that had taken place in any part of the world, with an exception for non-British subjects whose first marriage was outside New Zealand. In the case of persons whose defence was that they had been separated from their spouse for seven years, the prosecution was required to prove that the accused had known that they had been alive during that time. Bigamists could be sent to prison for seven years with hard labour and the punishment for a second offence was 14 years with hard labour.[17]

The law on bigamy was clear, but a number of popular beliefs endured about the circumstances under which a second marriage could take place. The most widely held belief was that if a spouse had been absent for seven years, and there was no knowledge that he or she were alive, remarriage was legal.[18] While a lack of knowledge of the existence of a spouse for seven years might be a defence to a bigamy charge, it neither annulled the first marriage nor made the second one legal. Other beliefs were that if one spouse had remarried, the other was entitled to do the same; that if a spouse was reputedly dead remarriage could take place; and that if a husband and wife agreed to separate — verbally or by written agreement — remarriage could legally follow. All of these explanations for bigamy were offered as defences in New Zealand courts.

The Extent and Nature of Bigamy

Most of what we know about the extent and nature of bigamy comes from bigamous marriages that ended up in court. However, historians agree that the number of bigamous marriages in the past far exceeded the number of prosecutions for bigamy and its full extent will never be known.[19] In New Zealand bigamy was regarded as common but difficult to detect and to bring to court. The *Daily Southern Cross* newspaper reported in February 1864 that 'The crime of bigamy is becoming every day more common in this colony, and there appears to be really no salutary legal means of checking it.'[20] In July 1872 Justice Gresson, opening a session of the Supreme Court in Christchurch, noted, 'There is a case of bigamy, which is very common in these colonies, and which often goes unpunished, from the difficulty in procuring proof of the marriage, and also, I fear, not seldom for its being regarded by many with much less disfavour than a crime of such magnitude deserves.'[21]

Migration was one way men, seldom women, could put a spouse and family behind them, either leaving with a new partner or marrying again on arrival. The literature on marriage breakdown in Great Britain often refers to the colonies as the refuge of absconding husbands.[22] The closeness of the Australasian colonies also opened up a relatively easy two-way route out of one marriage and into another. For those who wanted to escape from an uncongenial marriage or from responsibility, regular shipping, lack of controls on mobility and fluctuating labour markets could facilitate a new start among strangers and a new marriage.

Despite claims that bigamy was common in the colony, it was relatively unusual for a bigamy case to come before the courts. Following the first trial in 1849, there were no further charges until 1863, at which time there was a growing international interest in bigamy trials. Reports of the infamous British case involving Major William Yelverton, later Lord Avonmore, and Theresa Longworth had a huge following.[23] As the case was litigated through the courts of England, Scotland and Ireland in the first half of the 1860s, the New Zealand press reported it avidly, the story made all the more interesting by Yelverton's New Zealand connections.[24] He was well known in Wellington and Whanganui, where he had served in the British army in the 1840s; several members of his extended family had since made their homes in the colony, and, in trying to get rid of Theresa, Yelverton had suggested she migrate to New Zealand. Long after the case was decided in Yelverton's favour, the New Zealand newspapers retold the story.[25]

The public's fascination with bigamy was fuelled by popular novels and plays. Colonial newspapers serialized the bigamy novels of Mrs Henry Lloyd, Mary Elizabeth Braddon and Cyrus Redding, which were also extensively advertised by local book sellers and circulating libraries. A future premier, Julius Vogel, adapted Braddon's *Lady Audley's Secret* for the stage within six months of its publication, and it was performed in the larger towns several times between 1863 and 1865.[26] When the reality played out in the local courts, it attracted large audiences and wide newspaper coverage, heightening awareness of the crime and its consequences.

Bigamy trials were always news. The headlines spoke of 'much-married' and 'oft-married' men and women, 'sensational' and 'extraordinary' cases. Yet, despite a rapidly increasing population the number of people charged with bigamy in New Zealand remained relatively static over the four decades from 1860 to 1900: 14 in the 1860s; 22 in the 1870s; 18 in the 1880s; and 16 in the 1890s. The rarity of its appearance in court probably added to the interest in its occurrence.

Most bigamy charges were heard in the main towns. Christchurch police, perhaps as a result of a major re-organization of the provincial force carried out

under Robert Shearman in the 1860s, were particularly active in prosecuting bigamy cases, with 18 people charged and 16 cases proceeding to trial.[27] Auckland had ten people charged with bigamy and eight trials, five of these taking place in 1882. Wellington had ten charges and seven trials; Dunedin nine charges, with six going to trial. Although most Supreme Court trials took place in the larger towns, trials also took place in a number of provincial towns, including Invercargill, Timaru, Hokitika, Nelson, Palmerston North, Napier, Gisborne, Whanganui and New Plymouth.

Men predominated among those charged with bigamy in the colonial courts. However, with 49 men and 22 women charged, the ratio of one woman for just over two men is at the high end for women relative to other studies which show three to five men for every woman charged. This suggests that the shortage of marriageable women in the European population facilitated women's second bigamous marriages and their discovery.[28]

Reflecting an adult population made up largely of migrants, over a third of the alleged bigamists had at least one marriage that took place outside New Zealand. Nine were first married in England, three in Ireland and seven in Australia. In another four cases both marriages had taken place elsewhere and one case related to a second marriage in Australia.[29] Extra-territorial marriages were far more common among men than women charged with bigamy: only four (18%) of the women had a marriage abroad, whereas 20 (41%) of the men did. A charge of bigamy was most commonly brought to court within six months of the alleged bigamous marriage, although the time that elapsed could be much longer — seven and a half years in the case of Elizabeth Darrah.[30]

The lower courts, where bigamy charges were first heard, discharged 13 men and six women, or 27% of defendants. The failure to establish sufficient proof of marriage and identity was the most common reason for a discharge, and in over half of the discharges one or both marriages had taken place outside New Zealand.

In the Supreme Court, two women had their indictments thrown out by grand juries. Of the remaining 50 cases heard before judge and jury, 24 defendants, half of the women and over 40% of the men, returned a guilty plea. Most guilty pleas occurred after 1880 when evidence was more reliable and when it is likely that defendants and their lawyers considered a guilty plea as a sign of contrition that might lead to a lighter sentence.[31] Juries acquitted three women and eight men, returning guilty verdicts for the remaining 28 men and 11 women.

Bigamy charges do not tell the whole story of bigamy, even as it appeared in the courts. Bigamy hearings and divorce proceedings reveal incidences of

alleged bigamy which went unprosecuted. Richard Rathbone and William Kelly successfully defended bigamy charges in the Resident Magistrate's Court in Auckland on the grounds that their first wives were bigamists and those marriages had been null and void. Neither woman was charged with bigamy.[32] When the courts began to hear divorce petitions, bigamies came to light. Charles Blackwell divorced his wife in 1872 on the grounds of her failure to co-habit with him, her bigamous marriage to William Moss, adultery and the birth of the Moss children. Charles was awarded his divorce and remarried.[33] Usually no evidence was sought to prove the alleged bigamy and no bigamy charges were laid.

Court cases for a range of other offences incidentally disclosed bigamies that remained unprosecuted. Margaret Hardington's bigamous marriage became an issue when she sued for compensation for a dog bite she suffered when crossing the yard of the Star Hotel.[34] Michael Burke revealed his wife's bigamy when he was charged with having a dog without a collar. His defence was that the dog belonged to his wife who had left him to live with, and marry bigamously, a soldier.[35] Other bigamies are revealed in larceny, forgery and murder cases.

Many cases of bigamy must have remained hidden or undetected. The Australian bigamy trial of Harriett Corston, a former New Zealand businesswoman, for instance, leads to Alfred Hibble, her second husband's brother, in Nelson. Alfred married Naomi Mathews in 1858 and again in 1866. He did so because the first marriage was bigamous. He had married 18-year-old Alice Fell in London in 1852 and left her to migrate to Nelson. He remarried Naomi after Alice divorced him in England.[36] Such quiet bigamies probably lurk in the background of many colonial families.

Detecting Bigamy

Bigamy was most often uncovered by one or other of the bigamist's spouses. Suspicious actions, neighbourhood gossip, a confession, a letter, a former partner turning up at the gate could all lead the first or second spouse to discover an undisclosed marriage. When this happened, the spouse, or a family member, had to decide whether to lay information that might lead to the arrest of the alleged bigamist. Such a decision was not always easy, particularly for women who risked their economic security and social respectability.

Both men and women who had innocently entered a bigamous marriage laid information with the police when they discovered their partner's deception. George Sach Dyer, a storekeeper of Nelson, married Emily Matilda Smith, a barmaid, in January 1866. Dyer had heard that Emily was a married woman, but she denied this. Three weeks after their marriage he started to ask more

questions as he noticed that she 'appeared very uncomfortable'. She then admitted that her real name was Ellen Cane and she had married a soldier in Auckland in December 1864. Dyer initiated a prosecution, not because he wanted Emily to go to prison, but because 'I only want to free myself from her'.[37] Mary Jane Willows married blacksmith William Lyttle in Whanganui in 1880, believing he was a bachelor and left him after her brother discovered he had a former marriage. Her brother provided the information that led to Lyttle's arrest and conviction.[38]

Letters occasionally alerted a second wife to her husband's prior marriage. Phoebe Ruck found out that her husband had been married in England when enquiries were made on behalf of his first wife. Ruck had left his wife and children in Cheltenham and migrated to Wellington with a young woman who subsequently died. He then wrote to his wife regretting that he could not return to England and promising to send her money. Instead he married Phoebe East and, when confronted with a letter from his first wife, denied everything. A further letter from England containing his marriage certificate, a likeness and his earlier letter ensured he appeared in court.[39] Remanded on bail, Ruck did not return to court. His New Zealand wife gave birth to twins the same month and it seems likely that the charge was withdrawn.[40] Ruck developed a successful cabinet-making business and remained married to Phoebe until his death in 1891. Jane Smith discovered in 1892 that her husband had been married previously when a letter to his first wife was delivered from the dead letter office. She read the letter, which was written 'as from a husband to a wife', but did nothing about it at the time. Thomas Smith's bigamy was revealed a year later when the police arrested him for failing to pay maintenance awarded in 1887 to his first wife.[41]

First wives who initiated bigamy complaints sometimes travelled significant distances to find their wandering husbands. The wives of John Robertson, Charles Hackett, Thomas Braithwaite and Edward Lawlor travelled from Australia in search of husbands who had come to New Zealand to find work or escape from their marriage. The four men all contracted New Zealand marriages. In 1863 Martha Robertson confronted her husband in a Dunedin hotel in front of witnesses.[42] Susannah Hackett turned up at the Christchurch home of Charles Hackett and his second wife; and Ann Lawlor visited the Auckland police station to lay a complaint of desertion.[43] There was an arrest warrant out for Thomas Braithwaite when the police picked him up for theft and laid an additional charge of bigamy.[44]

It is clear from the context of bigamy cases that the extended family involved themselves in the marriages of their kin. Family members often provided the information that led to an arrest for bigamy. They might do this

out of a mixture of motives, not always sympathetic to their own kin. Mary Ann Manning gave evidence at the 1867 bigamy trial of her sister, Fanny, who had married William Glover in 1861. By 1865 Glover was advertising that he would no longer be responsible for his wife's debts, a common signal to the community that a marriage had broken down.[45] Fanny moved first to Wellington, then to the Wairarapa where she became housekeeper for publican Robert Gibbs. She used the name Frances Gordon and the fiction that she was a widow. When she became pregnant to Gibbs, they were married in May 1867. Fanny Glover was arrested and charged in July on information laid by her brother-in-law at the instigation of his wife, Mary Ann, 'not out of enmity, but out of duty'. Fanny pleaded guilty and she was sentenced to nine months in prison with hard labour. Despite a petition from friends seeking clemency, she remained in prison and gave birth to the first child born in the Wellington Gaol.[46] Fanny and Robert stayed together after her release, having three more children, all initially registered in the name Glover as Fanny remained legally married to her first husband.

Malicious prosecutions initiated by husbands were not unknown. In November 1869, John Crow charged his wife, Jane, with bigamy in the Whanganui court. There were no witnesses and Jane was discharged.[47] In October 1872, also in Whanganui, the police charged Margaret King with bigamy and, within days, withdrew the charge. It seems likely that the charge was based on information provided by her husband, Charles King, and the police discovered it had no substance.[48] A third case occurred in Patea in June 1873 when Joseph Hall charged his young wife, Elizabeth, with bigamy after 18 months of marriage. The couple had already separated and he 'completely failed to establish a case'. Elizabeth returned to live with her parents, and her father sued Hall for the cost of her keep.[49]

In the course of carrying out their duties, the police might find evidence that a bigamy had occurred. They were most likely to do this when investigating a complaint about a husband's desertion or failure to pay maintenance. Charles Rosinsky's wife of two years sought a warrant for his arrest in June 1867 after he deserted her and she feared he was about to marry Mary Parry and escape to Australia. In fact the marriage had already taken place. Rosinsky was arrested in Sydney and returned to New Zealand to face a bigamy charge.[50] Twelve other men charged with bigamy had a prior appearance in court on charges of desertion or failing to pay court-ordered maintenance to a first wife. Police enquiries about larcenies and other crimes could also lead to bigamy charges. In 1896, Etienne Brocher, also known as Stephen Bosher, a market gardener living in Petone, was on remand for theft when he was charged with bigamy. However, it is probable that the real

reason he was charged was that he was suspected of the murder of Emma and Joseph Jones, a crime for which he was subsequently tried and executed. Once it was proved that he had married Mary Anne Reece bigamously in 1892, she was free to give evidence at his murder trial.[51]

Bigamy Prosecutions

The standard of proof required for conviction in a bigamy case was high. Adjudicating at Christchurch's first bigamy case in 1864, Justice Gresson told the grand jury:

> The prosecutor is bound in this case to prove to your satisfaction prima facie that a valid marriage was solemnised between the prisoner and his first wife; secondly that while she was still living, the prisoner went through such a ceremony with the other woman named in the indictment, as but for the former marriage would have made her his wife. The law in general holds that acknowledgement, cohabitation, and reputation afford presumptive evidence of marriage, but as the law will not presume the prisoner's guilt, it requires on prosecution for bigamy that an actual marriage be proved, and the better opinion appears to be that even the prisoner's own admission of the fact will not dispense of proof of the first marriage.[52]

As we have seen, most bigamy cases discharged in the lower courts failed on the issue of proof of the first marriage. In the higher courts, defence lawyers seized on any inadequacy in the documentary evidence of marriage to argue that the case should be thrown out. Judges, however, were critical of such argumentation and might accept the documentation, even if it were flawed. William Moorhouse, who defended Charles Hackett in Christchurch in 1864, objected that the Tasmanian marriage certificate produced in court was not 'an examined copy of the Registry' and failed to state that the marriage was 'in accordance with the laws of the country'. His objections were over-ruled on the evidence of a former Deputy Registrar of Marriages from Tasmania living in Christchurch.[53] The same year Caroline Launder's lawyer, George Barton, submitted that the certificate produced by the prosecution, which purported to be an examined copy from the register of marriages at the parish church at Portsea in Hampshire, was inadmissible. He demanded 'a sealed copy of an extract from the registrar's book'. After much technical discussion, Justice Richmond, noting Barton's objection, ruled that the document was admissible.[54] Eighteen months later, Richmond was not so convinced that the copy of the marriage certificate produced by Jane Ellen Johnston testifying to her marriage with Alexander Johnston in Liverpool in 1855 was admissible evidence. He wrote in his notes, 'I let the case go to the jury upon the Prisoner's admission & proof of cohabitation as man and wife'.[55] The jury decided that Johnston was guilty, but Richmond declined

to pass sentence until the Court of Appeal ruled on the admissibility of the certificate. Johnston was bailed on recognisances of £100 of his own and £50 from two sureties. By the time the Court of Appeal ruled that the evidence was sufficient for a conviction, he had vanished.[56]

In addition to evidence that both marriages had taken place, the Supreme Court required proof that the parties named in the certificates were those appearing in court. It was usual for the officiating clergyman or registrar or a witness to the marriage to provide the identification. This was always complicated when marriages had taken place outside the country.[57]

The inability to compel Australian witnesses to attend trials in New Zealand thwarted a number of bigamy prosecutions. When William Antill was charged with bigamy in Christchurch in 1872, advocate Thomas Joynt argued that there was no proof that he was the man who married Margaret Kavanagh in Tasmania in 1853. Justice Gresson dismissed the case, although he was 'morally convinced of the validity of the first marriage'. Margaret Antill later claimed that a woman living in Christchurch could have proved the identity of the parties, but this was unknown to the police at the time of the trial. One local paper claimed the outcome was 'a serious failure of justice'.[58]

Ellen Feeney's first marriage took place in Ireland in 1875. Five years later her husband, Daniel, left to look for work in America. In October 1881, Ellen joined her sister and brother-in-law in Dunedin with a child who could not possibly have been Daniel's. In 1886 she married Albert Beaumont. Three years later Daniel turned up in Dunedin and, encouraged by Ellen's brother-in-law, laid the information for a bigamy charge. Robert Stout defended Ellen and obtained her discharge in the Resident Magistrate's Court on the grounds that there was no proof of the identity of those named in the marriage certificate. Neither her sister nor brother-in-law had been at her first marriage.[59] By June the following year a witness to the marriage had been found and Daniel Feeney launched a second prosecution. This time the case went to the Supreme Court, where the grand jury threw out the indictment. Ellen and her second husband remained married until Ellen died in 1895.[60]

Proof of marriage and identity was not only a difficulty with overseas marriages. In 1876 Martha Craig was discharged by the Christchurch Resident Magistrate's Court when Catherine Nicholson, the star witness for the prosecution, declined to identify her as the Martha Fitzpatrick whom she had seen married to Francis Coyne eight years previously in Auckland. Nicholson had been subpoenaed to give evidence and admitted to spending some time with Craig prior to the hearing. The police suspected collusion and well they might. Nicholson had employed Martha in Auckland, lent her

money to cover the costs of her first marriage and then sued the Coynes when they did not repay the loan.[61] Mary Ann Hunt, the daughter of a Māori mother and Pākehā father, married John Tiller in Auckland in 1865 and William Mathieson in 1890. She had left Tiller at least as early as 1872 when she and her Ngāti Ruanui mother returned to Taranaki to live at Parihaka. At her trial in 1891 the bill of indictment was thrown out by the New Plymouth grand jury when it was told a witness to the first marriage could not attend court.[62]

Nevertheless, colonial society was not as anonymous or as atomized as some bigamists might have hoped. The witnesses called to provide evidence of identity must sometimes have surprised defendants and their lawyers. For example, at the trial of Tasmanian man Charles Hackett, William Orme and Mary Matthews, former residents of Hobart relocated to Christchurch, identified Hackett and his first wife, Susannah. Matthews gave evidence that they were reputed to be man and wife.[63] At William Lyttle's trial, two fellow Belfastmen gave evidence in support of identification. Harry Hull knew the Lyttles in Belfast and travelled to New Zealand on the same ship in 1874. William Sargeson had been a member of the Presbytery of the church in which Lyttle's first marriage was solemnized and he authenticated the minister's signature on the certificate. He also knew the sexton, who was Lyttle's father-in-law.[64]

Bigamy charges could also fail on technical issues related to the Marriage Act. The Act required marriages to be carried out by a lawfully appointed person. There were no issues with marriages performed by a Registrar of Marriages whose appointment carried legal authority to solemnize marriages. When a minister or priest gave evidence of the marriage, however, the court required proof that he had been duly authorized to carry out the ceremony. This proof was furnished by a copy of the authorization in the Government *Gazette*. In the case of Elijah Hymus there was a spectacular failure of evidence on these grounds.

In December 1870 Hymus married 18-year-old Elizabeth Gorstage. Within a week the marriage had collapsed. Hymus obtained a post 'up country', his wife refused to move and the pair separated.[65] On 11 December 1873, Wesleyan minister Samuel Macfarlane officiated at the marriage of Hymus, now working as a fruiterer in Christchurch, to Mary Dady, a domestic servant at a local hotel. The couple lived together for three weeks before Mary learned Hymus was still married to his first wife. She informed the police and he was arrested at the end of January. When the charge was heard in the Magistrate's Court, the arresting policeman, Harry Feast, was sympathetic, describing Hymus as 'a sober, industrious man', although 'a little weak minded'. Despite Feast's testimony, Hymus was committed to trial. Although

there was plenty of evidence that Hymus had married twice, the case fell through in the Supreme Court. Hymus's lawyer argued that the prosecution had failed to prove that Macfarlane was authorized to conduct marriages and therefore the marriage to Dady was null and void. The Crown Prosecutor, Thomas Duncan, admitted that he could not find Macfarlane's name in the gazetted list of authorized marriage celebrants. Justice Gresson directed the jury to return a verdict of not guilty; Hymus received 'a severe reprimand' and left the court a free man.[66] In a further twist it emerged that Macfarlane had been authorized to perform marriages, but his name had been omitted from the index to the printed *Gazette*. The *Press* described the outcome as 'an extraordinary failure of justice'; 'a scoundrel' had been allowed to escape his 'deserved punishment'.[67] Mary Dady was married again within a fortnight of the trial.[68]

The most common, and the most successful, defence in a bigamy trial was that of living seven years apart without knowledge that the first spouse was still alive. Seven of the 11 defendants who won acquittals made their case on these grounds. Judges and juries were clearly receptive to the defence, even when the evidence was less than compelling, and were quick to acquit defendants who used it and made a plausible case for a stable second relationship. Charles Parker, for example, came to New Zealand as a seaman on the *Geraldine Paget* in late 1874 and settled in Christchurch. Five months later he married Mary Troy, who had travelled on the same ship. After 16 months of marriage they separated by mutual consent. Around 1880 he started to live with 19-year-old Susan Dougherty. They had two children and married in December 1883. Two months later, he was arrested on information supplied by the first Mrs Parker. Parker's defence that he had not known his first wife was alive was contradicted by Eliza Dutton, also from the *Geraldine Paget*, who gave evidence that Mary had continued to live in Christchurch and Charles had asked after her within the past two years. Despite this, the jury, undoubtedly influenced by Susan Dougherty, who told the court that Parker was 'a good man to her' and that she had not instituted the proceedings, found him not guilty.[69] Susan may have regretted her defence of her husband: in 1886 she sought maintenance and an order protecting her property and earnings from Charles, who was perpetually drunk. In 1887 she took him to court for failing to pay maintenance.[70]

Other defences met with varying degrees of success. Two women argued that their first marriage was null and void as they had been under 21 and lacked parental consent. Both were found guilty.[71] Alfred Pearce Phillips and George Peck both claimed that their first marriage in New Zealand had been illegal as they had prior marriages in England. Phillips knew that his first

wife had died and considered his third marriage was his only legal marriage.[72] Peck did not know whether his first wife was dead or alive.[73] The court did not believe either of them, although the online marriage register indexes for England show that both were telling the truth. Pierre Tielle, Thomas Moore and Rachel Volan told the court that they had been drunk when they entered their bigamous unions and were all convicted. In the case of Moore, 'a man of colour', Judge Johnston decided the circumstances 'were such as to render it almost a venial offence' and he imposed 'as light a sentence as possible, consistent with the ends of justice'.[74] Tielle and Volan did not get off so lightly.

However, there were also cases, usually involving the deception of a young woman, where no defence was possible, where family and community disapproval was particularly strong and defendants recognized the wisdom of a guilty plea. James Ladbrook met Elizabeth Lamont in March 1884 when he took casual work threshing on her father's Doyleston farm. Although he was married with three children, Ladbrook told Elizabeth he was single and returned to see her after the threshing was completed. In May she agreed to marry him and when the ceremony was held in October she was pregnant. Within two weeks he told her the police wanted him. He handed himself in and did not seek bail. Ladbrook pleaded guilty and got nine months in prison with hard labour.[75] On his release, he returned to his first wife. In April 1882, a young farmer named Walter Tricker married Elizabeth Marshall and, within the year, Elizabeth gave birth to a daughter. In June 1883, Tricker left his family and went to Gisborne where he remarried using the name George Henry Marshall. He proposed that his second wife, Emily, go to Wellington and he would follow. When he did not turn up, she returned to Gisborne and gave the police information that she had gathered about his first marriage. A warrant went out for his arrest. Tricker was cornered: the police already held a warrant relating to his desertion and failure to pay maintenance to his first wife. In his 1884 Supreme Court trial for bigamy, he pleaded guilty and apologized. Justice Gillies gave him two years in prison with hard labour, saying it was a very 'glaring case'.[76]

Half the women whose cases were tried in the Supreme Court pleaded guilty, usually to mitigate the punishment. A man had led them astray, ill-treated or deserted them. Marion Webb pleaded guilty to bigamy in 1872 and was sentenced to only six months in prison.[77] When she petitioned the Governor for an early release, the sentencing judge noted, 'No observation to offer — except that the Prisoner acted under the influence of her husband who wished to get rid of her and represented himself as her brother. She, too readily yielding in obedience to her own inclinations in favour of the man she married'.[78]

Judge Gillies concluded that Ellen Dann, 17 and pregnant when she was deserted by her husband within days of their marriage, although guilty of a bigamous second marriage, did not require a severe sentence. Ellen had kept herself respectable, 'instead of doing, as many others in like circumstances — gone to the bad altogether', and was in a stable relationship. She had to provide recognisances of £100 and come up for sentencing if called upon.[79] Amelia Cole's lawyer argued in 1891 that hers was a 'pitiful case' of a scoundrel leading a young girl away for his own ends and then ill-treating and deserting her. Chief Justice Prendergast arranged for her to be placed in a farming family for six months to give her a chance of recovery. The experiment was not a success, but at the end of the period she was discharged.[80]

Kate Schmidt, however, was known to the police and received little sympathy when she pleaded guilty. Kate, also known as Amelia, had left her first husband, Louis Schmidt, a Christchurch tailor, in 1874 and married Michael Dryden in Dunedin. Schmidt was willing to take his wife back and instructed Stout to defend her. Stout appeared in court only to say he could find no defence; Judge Johnston regarded Schmidt's written request that his wife be allowed to return to him as most irregular. Nevertheless he was concerned about committing Kate to prison until told that she kept a brothel in Dunedin's infamous Maclaggan Street. She received six months with hard labour.[81]

For men, the favourite argument in mitigation was that the first wife had 'been a bad lot' and that the defendant had made a successful, although bigamous, second marriage. This was argued in the case of John Millichamp, who married Fanny Taplin five months after they arrived in Christchurch on the same ship in January 1871. Fanny and John lived together for only a short time and little can be found out about Fanny for the next few years. However, by 1875 John was working in Temuka, where he met Emma Thorp. They married in February 1876, and in March he was arrested for bigamy. When his case came into the Supreme Court, John pleaded guilty. His employer, Edward Elworthy, and the police testified to his good character; Emma admitted that she had been aware of his first marriage, but he had not seen his wife for four or five years. Inspector Pender gave evidence that he knew Fanny, 'who was a prostitute', and Millichamp received a six-month sentence. On his release from prison he returned to Emma, but his marriage to Fanny was still intact. By 1881 Fanny, who in fact seems to have been quite respectable, wished to re-marry. She petitioned for and was granted a divorce on the grounds of her husband's cruelty. John and Emma remarried after the divorce and he became a pillar of the community.[82]

By the end of the 1870s, 37 people had appeared in court on bigamy charges: 14 had been discharged without trial, six had been acquitted and

17 had been found guilty. Bigamy cases were difficult to prosecute and had a high failure rate. Two cases in the later 1870s indicated that in both the judiciary and the government there was a reluctance to pursue bigamous marriages.

The Upjohn and Cunningham Cases

In January 1876 Arthur Edward Upjohn was charged with bigamy in the Christchurch Magistrate's Court, his bigamous marriage having been discovered when he was arrested by Christchurch police in December for deserting his first wife and young son.[83] He was sent for trial and appeared before Justice Johnson in the Supreme Court in April. Following his guilty plea, his lawyer argued in mitigation that he was of good character and that his first wife, a reputed prostitute, was 'a very bad woman'. Once the first marriage had been proved, his second wife gave evidence of 'the kindly manner' in which Upjohn had treated her while they lived together. She had no wish to disturb their marriage and stated emphatically that the case had not been brought at her instigation. Johnston was clearly sympathetic to Upjohn. Before sentencing him to six months in prison, he commented on the way the case had come to light and criticized the police for the role they had played. 'A vigilant and effective police force', he said, 'were a very good thing for a locality, but it was quite a different thing when there was a meddlesome one.' On the prosecution's explanation that the bigamy had been discovered when Upjohn was arrested for desertion, Johnston retorted that his remarks should not be construed to mean that the police should not search out crime 'but that it was not their duty to ferret out cases of this kind unless information had been given to them'.[84]

Johnston's strictures on the police caused some concern among the city's leaders and in the press. The Superintendent of Canterbury, William Rolleston, asked the Provincial Secretary 'to obtain from the Commissioner of Police a full report of the case of the Queen v Upjohn as tried in the Supreme Court recently, and requesting to know if there are any regulations for the guidance of the Police in the institution or prosecution of proceedings in case of Felonies'. The Commissioner, Robert Shearman, obliged, sending all the papers and an overwhelming list of authorities supporting the police action.[85] Unfortunately, although the minutes of the Provincial Secretary show that the papers went to Rolleston and were later returned to the police, they are no longer available.

The Canterbury *Press* feared that Johnston's observations might undermine the authority of the police. The *Press* considered that a detective who, in the course of carrying out his work, obtained information of a further crime, had a 'duty to pursue his investigation into all its results; and if he

finds himself in possession of evidence enough to ensure a conviction — a matter upon which his own experience must be the best guide — to take the necessary steps for the conviction being obtained.'[86]

Nevertheless Johnston's comment on the Upjohn case had a significant impact on prosecutions for bigamy in Christchurch after 1876. Between 1864 and 1876, 11 bigamy charges were laid in Christchurch; in the following 24 years, when the number of charges in other towns increased, there were only seven. The impact reached beyond Christchurch when the Attorney-General issued instructions about the policing and prosecution of bigamy cases in 1879. That year Michael Cunningham was charged with bigamy in the Whanganui Court. His bigamous marriage was discovered when police arrested him for larceny in December 1878 and found he was carrying a recent marriage certificate. The police were aware that Cunningham was already married and that his wife was still alive. The court sentenced him to prison for three months for larceny and he was charged with bigamy. His defence was that he had not seen his first wife since she left him, and, as he had been told she had remarried, he thought he was free to do the same. He was remanded while further evidence was gathered.[87]

Following Cunningham's remand, Sub-Inspector Goodall of the Whanganui constabulary 'heard that upon the trial of a similar case in 1875 at Dunedin or Christchurch Mr Justice Johnston gave a very decided opinion that it was very undesirable that the police should prosecute in cases of the kind as long as the interested persons were satisfied.' Goodall sought direction from Robert Shearman, now Superintendent of the Wellington Constabulary District, as to whether he should seek permission from the bench to withdraw the information.[88] Shearman's office decided to seek advice from the Commissioner of the Armed Constabulary, George Whitmore, who in turn thought it necessary to seek the opinion of Robert Stout, the Attorney-General, advising that the case 'must cost a good deal & the interested woman appears unwilling to prosecute'.[89] Stout concluded 'that unless those interested come forward willingly & voluntarily the police should not proceed but in all cases where the parties interested lodge information the police should prosecute. In this case if either of the parties married appear the prosecution should go on.'[90] As far as the state was concerned, bigamy was to be self-policing; marriage was primarily a private institution to be kept out of the public arena unless the parties themselves or their families and friends decided otherwise. Goodall dropped the prosecution; Cunningham served his time for larceny, but got away with bigamy.

Just how this policy of tolerance was communicated to the police force in general is not clear. It was certainly followed in Whanganui where, three

years later, the local newspaper reported that the police had refused to take action against an alleged bigamist until information was laid by the friends of the spouse[91] and doubtless was at least partly responsible for the continuing low number of bigamy charges nationally.

Contrary to the tolerance shown at the political and community level, judges continued to issue strong statements from the bench condemning bigamy. They described it as an offence against the law, society, the wronged spouse and any children. When the lawyer Edward Tyler, pleading in mitigation during an 1880 bigamy case, argued that the 'offence was rather of a private nature than one against the public', William Richmond disagreed, saying, 'The offence was a very grave offence against the public and against his wife and unfortunate children'.[92] In sentencing Andrew Gallagher in 1881, Justice Gillies said that 'Bigamy was not only a crime against the woman who was wronged, but, in committing it, the prisoner was guilty of falsehood, fraud, imposition, and perjury, in addition to a breach of the solemn vows entered into at his first marriage'.[93] In March 1896 Chief Justice Prendergast told William Davies that his actions had been a great grievance to the women he had married 'but the worst damage was the effect of this sort of thing upon society'.[94] Two years later Judge John Denniston stated that he looked on bigamy as the 'most serious crime which a man could commit'.[95]

Yet, for all their talk about the seriousness of bigamy, judges did not impose harsh penalties on convicted bigamists. No-one found guilty of bigamy in the nineteenth century received the maximum sentence of seven years. Women's sentences ranged from six months to two years, with one woman receiving a suspended sentence and another a probationary period. Sentences for men ranged from two months to five years, with the most common periods being two and three years. Nearly a quarter of the men convicted of bigamy received a sentence of under a year. Men such as Charles Matthews and Edward Williams, who each received sentences of five years, either had significant criminal records or adamantly denied the charges despite overwhelming evidence of their guilt.[96]

It might be wondered why bigamists risked the possibility of a conviction and prison when they could have simply cohabited. Recent work has questioned the extent of cohabitation in the past and suggested that few couples were prepared to run the gauntlet of public opinion by remaining outside marital bonds.[97] Clearly family and community pressures were operating in some cases of bigamous marriages. Men married bigamously when the young women they were courting became pregnant. Married women who had been deserted and left with children gratefully wed men prepared to support them. Others did not face these immediate pressures, but still entered

bigamous marriages for reasons of convention, loneliness, security, love or lust.

Whatever the reason for a bigamous marriage, the idea emerged that bigamy went unprosecuted so often that it was a 'privileged crime'. In 1893 the *Evening Post* asked:

> Is bigamy permissible in New Zealand? We of course know that at law it is a felony, and that it is supposed that the guardians of peace and order will arrest and prosecute the perpetrators of a felony wherever found. The police authorities in New Zealand, however, take a peculiar view of their functions…. we must … decline to accept the police dictum that the number of wives a man has, or the number of times a woman manages to go through the marriage ceremony without a funeral intervening, is merely a matter of domestic arrangement, with which the State has no concern.[98]

Two recent cases that had revealed unprosecuted bigamies had led to this outburst, but, as we have seen, the authorities had for some years operated on the basis that the state should not actively seek out bigamy. Bigamy had proved difficult to prosecute in an emigrant society; the community was tolerant when a bigamous marriage was stable and the partners otherwise law-abiding. Marital and domestic arrangements were increasingly private and of public concern only if deceived, hurt, humiliated or outraged spouses and their kin were prepared to make them so.

RAEWYN DALZIEL

The University of Auckland

NOTES

I would like to thank Deborah Montgomerie and Caroline Daley for reading an early draft of this article and the two anonymous readers for their very useful comments and some pointers to information on policing.

1 H.S. Chapman to Sir George Grey, 10 September 1849, Grey Papers, NZ Letters Volume 6, Auckland City Libraries.

2 *Evening Post* (EP), 6 June 1893, p.2.

3 Marriage entry, 14 December 1835, Register of Marriages, Christ Church, Spitalfields, London Metropolitan Archives, P93/CTC1, Item 021. This can be found at http://interactive.ancestry.co.uk/1623/31280_194734-00285/6192775?backurl=&ssrc=&backlabel=Return#?imageId=31280_194734-00285_accessed 27 October 2015. Judge's Notes and Resident Magistrate Court Documents relating to the case are located in 'Papers relating to cases and land sales 1848–1849', Chapman, Eichelbaum and Rosenberg Families: Papers, MS-Papers-8760-046, Alexander Turnbull Library (ATL). Also see New Zealand Lost Cases Project, R v Rice Owen Clarke. For a discussion of hermaphroditism and marriage annulment see Gabrielle Houbre, '"An individual of ill-defined type" ("Un individu d'un genre mal défini"): Hermaphroditism in Marriage Annulment Proceedings in Nineteenth-Century France', *Gender and History,* 27, 1 (2015), pp.112–30. For the subsequent story of the Clarks see Athol Miller with Gail Lambert, *The Clark Family History: The Descendants of Josiah and Ann (née Rose) Clark of Great Marlow, Buckinghamshire, England,* Wellington, 1989.

4 H.S. Chapman to Henry Chapman, 24 August 1849, Chapman Letters, Volume 3, p.752, qMS-0420, ATL. Also see *New Zealand Spectator and Cook's Strait Guardian* (NZS), 5 September 1849, p.2; *Wellington Independent* (WI), 5 September 1849, p.3.

5 Statistics relating to bigamy offences and charges can be found in the annual *Statistics of New Zealand* from 1872 and the annual reports of the constabulary, later the police force, published in the *Appendices to the Journals of the House of Representatives* from 1873. From 1891 the *Statistics* also published data on the number of persons indicted in the superior courts for bigamy. The tables in the *Statistics* were based on persons taken into custody and the outcome of charges against them; those in the police reports were based on offences reported, apprehensions and outcomes. Although a small number of bigamy offences were reported and prosecuted in any one year, the two sets of statistics are not consistent with each other and do not completely align with data from other sources. My statistics, based on people charged, differ from these two sources when, as in one case, a defendant was tried twice, or, in another, two separate charges were laid. The *Statistics* are sometimes in error. For instance, in 1875 they give two women taken into custody for bigamy when other records show three women were charged and tried for the offence. My conclusion, looking at both sets of official statistics and checking these against other records, is that I have identified all the people charged with bigamy through to the 1890s, but it is possible that between two and four individuals discharged in Resident Magistrates' Courts in that decade may be missing. I have excluded from my analysis the case of the Reverend Dr John McLeod in 1890. McLeod was charged in Napier on a warrant from New South Wales, where his first marriage took place, for a bigamous marriage in the United States. He was discharged on the grounds that the NSW legislation regarding bigamy committed outside the boundaries of the colony was *ultra vires*. He was then charged for another offence committed in NSW and returned to Australia where he was convicted on the bigamy charge. He appealed his conviction to the Privy Council, which decided that the NSW Act was indeed *ultra vires*, and the conviction was quashed. See *Hawke's Bay Herald*, 1 April 1890, p.3, 2 April 1890, p.3, 3 April 1890, p.3, 11 April 1890, p.3; *Sydney Morning Herald*, 26 April 1890, p.14, 30 May 1890, p.6, 25 July 1891, p.9.

6 See Roderick Phillips, *Divorce in New Zealand. A Social History,* Oxford University Press, Auckland, 1981.

7 G.W. Bartholomew, 'The Origin and Development of the Law of Bigamy', *The Law Quarterly Review*, 74 (1958), pp.259–71. For bigamy in the early modern period see Martin Ingram, *Church Courts, Sex and Marriage in England, 1570–1640*, Cambridge University Press, Cambridge, 1987; J.A. Sharpe, *Crime in Seventeenth-century England: A County Study*, Cambridge University Press, Cambridge,1983.

8 Bernard Capp, 'Bigamous Marriage in Early Modern England', *The Historical Journal*, 52, 3 (2009), p.556.

9 Lawrence Stone, *Road to Divorce. England 1530–1987*, Oxford University Press, Oxford, 1995, p.21.

10 David Lemmings, 'Marriage and the Law in the Eighteenth Century: Hardwicke's Marriage Act of 1753', *The Historical Journal*, 39, 2 (1996), pp.339–60. Rebecca Probert has more recently argued persuasively for continuity in marriage practices across the eighteenth century and for a low rate of irregular marriage. See her *Marriage Law and Practice in the Long Eighteenth Century*, Cambridge University Press, Cambridge, 2009. Also see John R. Gillis, *For Better, For Worse: British Marriages 1600 to the Present*, Oxford University Press, Oxford, 1985; R.B. Outhwaite, *Clandestine Marriage in England, 1500–1850*, A&C Black, London, 1995.

11 Ginger Frost, *Living in Sin: Cohabitation as Husband and Wife in Nineteenth-Century England,* Manchester University Press, Manchester, 2008, pp.73, 80.

12 Beverley Schwartzberg, '"Lots of Them Did That": Desertion, Bigamy, and Marital Fluidity in Late Nineteenth-Century America', *Journal of Social History*, 37 (2004), p.574. Also see Mélanie Méthot, 'Bigamy in the Northern Alberta Judicial District, 1886–1969: A Socially Constructed Crime that Failed to Impose Gender Barriers', *Journal of Family History*, 31 (2006), pp.257–66.

13 Joanna Bailey, *Unquiet Lives: Marriage and Marriage Breakdown in England, 1660–1800*, Cambridge University Press, Cambridge, 2003, pp.183–6.

14 For the law on bigamy see Stone, *Road to Divorce*, pp.142–3; Frost, *Living in Sin*, pp.73–87. Offences against the Person Act, 9 George IV, London, 1828, s.xxii; 24 and 25 Vict., 1861, s.57.

15 An Ordinance for regulating Marriages in the Colony of New Zealand, 1847, 11 Vict., No.7, s.11.

16 Offences against the Person Act 1867, 31 Vict., No.5, s.54.

17 Criminal Code Act 1893, 57 Vict., No.56, Part XXI, s. 204.

18 See, for example, the letter from 'Anxious' published in the *Daily Southern Cross* (DSC) asking whether a man could reclaim his wife after seven years when she, having not heard from him, had married a second husband. The *Cross* wisely responded that this was 'a question for a lawyer', and that its impression was that such an absence 'does not relieve either husband or wife from the marriage compact.' DSC, 29 August 1866, p.4.

19 Lawrence Stone, *Uncertain Unions: Marriage in England 1660–1753*, Oxford University Press, Oxford, 1992, p.232; Stone, *Road to Divorce*, p.142; Capp, 'Bigamous Marriage', p.538. For information on the number of bigamy cases heard in England at different times see Ingram, *Church Courts*, pp.178–80; David M. Turner, 'Popular Marriage and the Law: Tales of Bigamy at the Eighteenth-Century Old Bailey', *London Journal*, 30, 1 (2005), pp.6–21; S. Colwell, 'The Incidence of Bigamy in 18th and 19th Century England', *Family History*, 11 (1980), p.92. Frost has speculated that in nineteenth-century England only one in five bigamists reached the courts, *Living in Sin*, p.72.

20 DSC, 29 February 1864, p.3.

21 *Star*, 1 July 1872, p.2.

22 For example, Olive Anderson, 'Emigration and Marriage Break-Up in Mid-Victorian England', *The Economic History Review,* New Series, 50 (1997), pp.104–109.

23 See, Jeanne Fahnestock, 'Bigamy: The Rise and Fall of a Convention', *Nineteenth Century Fiction*, 36, 1 (1981), pp.47–71; Arvel B. Erickson and Fr. John R. McCarthy, 'The Yelverton Case: Civil Legislation and Marriage', *Victorian Studies*, 14, 3 (1971), pp.275–91; Rebecca Gill, 'The Imperial Anxieties of a Nineteenth-Century Bigamy Case', *History Workshop Journal*, 57 (2004), pp.58–78; Duncan Crow, *Theresa: The Story of the Yelverton Case*, Hart-Davis, London, 1966; Chloë Schama, *Wild Romance: The True Story of a Victorian Scandal*, Walker Books, London, 2010.

24 For example, *Colonist*, 3 December 1858, p.4, 31 May 1861, p. 4; WI, 28 May 1861, p.4.

25 For instance, *Auckland Star* (AS), 10 July 1897, p.3, supplement, 9 February 1901, p.5, supplement; *Lake Wakatip Mail*, 24 November 1925, p.7.

26 *Otago Daily Times* (ODT), 14 April 1863, p.3; *Press*, 16 January 1865, p.3; *New Zealand Herald* (NZH), 3 August 1865, p.1.

27 For the structure of the police force in Canterbury (and other centres) see Richard Hill, *Policing the Colonial Frontier. The Theory and Practice of Coercive Social and Racial Control in New Zealand 1767–1867*, Volume One, Part Two, Historical Publications Branch, Department of Internal Affairs, Wellington, 1986, Ch.VIII.

28 Capp, 'Bigamous Marriage', p.547; Colwell, 'The Incidence of Bigamy', p.95.

29 The bigamy cases do not include any marriages that took place in Scotland. Scottish marriage law and practice differed from that in England, resting largely on mutual consent. See Leah Leneman, *Alienated Affections: The Scottish Experience of Divorce and Separation 1684–1830,* Edinburgh University Press, Edinburgh, 1998 and Eleanor Gordon, 'Irregular Marriage: Myth and Reality', *Journal of Social History*, 4, 2 (2013), pp.507–25. Judge Johnston in his handbook, *The New Zealand Justice of the Peace: a treatise on the powers, duties and liabilities of magistrates, coroners, & peace officers, in the colony…*, McKenzie & Muir, Wellington, 1864, stated in an appendix on bigamy that if the [first] marriage took place in Scotland or a foreign country a witness 'expert in the law of such country must be called to prove the marriage was good according to the law of that country'. However, whether this requirement or other factors account for the lack of charges relating to Scottish marriages is not clear.

30 Francis Hewson, a widower, believed Elizabeth Darrah was a widow when he married her in 1874. In the late 1870s he discovered her first husband was still alive but stayed with her until her drinking and violence forced him to leave. He provided the information that led to her arrest and trial. NZH, 19 April 1882, p.6. The time between the alleged bigamous marriage and a court charge can be determined for 67 of the 71 charges found. Two charges were laid within less than a month of the marriage; 24 within less than six months; 31 within less than a year and 50 within less than two years.

31 Before 1880, eight out of 23 defendants pleaded guilty; 16 out of 27 after 1880.

32 NZH, 23 November 1874, p.3, 27 November 1874, supplement, p.1; DSC, 26 February 1876, p.2, 1 March 1876, p.3, 10 March 1876, supplement, p.1; NZH, 28 February 1876, p.3, 10 March 1876, p.3.

33 WI, 19 November 1872, p.2.

34 DSC, 31 May 1870, p.5.

35 AS, 21 May 1878, p.3.

36 The two marriages can be found in the online index to the New Zealand Marriage Registers. For the divorce petition of Alice Fell see *The Standard* (London), 27 June 1864, p.6. The story of Harriet's bigamous marriage to George Hibble is told in Catherine Bishop, *Minding Her Own Business. Colonial Businesswomen in Sydney*, NewSouth Books, Sydney, 2015, pp.240–8.

37 *Grey River Argus*, 23 October 1866, p.2.

38 NZH, 26 September 1882, p.3.

39 NZS, 24 February 1864, p.2; WI, 25 February 1864, p.2.

40 See Births, Deaths and Marriages Online, Birth Index 1864/8891 and 8894; EP, 24 June 1873, p.2 where the death of one of the twins aged 9 years and 4 months was reported.

41 *Daily Telegraph*, 29 August 1893, p.2, 12 September 1893, p.3, 20 September 1893, p.3.

42 *Southland Times*, 26 June 1863, p.3.

43 *Lyttelton Times* (LT), 19 December 1863, p.4; AS, 3 July 1880, p.3.

44 WT, 6 July 1869, p.2.

45 LT, 20 June 1865, p.7. On public notices relating to marital conflict see Mary Beth Sievens, *Stray Wives: Marital Conflict in Early National New England*, New York University Press, New York, 2005.

46 WI, 3 September 1867, p.4, 7 September 1867, p.7, 31 December 1867, p.3, 21 January 1868, p.4; Johnston to Colonial Secretary, 3 April 1868, Justice Department, JI 74 1868/1184, Archives New Zealand (ANZ), Wellington. Napier policeman Patrick Coghlan was arrested in 1877 after a complaint laid by his brother-in-law. Coghlan had married Catherine Casey in Ireland in 1863 and then migrated to New Zealand with her brother, leaving Catherine at home. The two men had kept in touch for some years and, when the correspondence stopped, Casey found that Coghlan had remarried. The case did not reach the Supreme Court, but the second marriage broke up and both partners remarried. EP, 7 September 1877, p.2.

47 *Wanganui Herald* (WH), 24 November 1869, p.2.

48 WH, 17 October 1872, p.2, 21 October 1872, p.2.

49 *Taranaki Herald*, 28 June 1873, p.2, 26 July 1873, p.3.

50 DSC, 10 June 1867, p.3; *Timaru Herald*, 1 July 1868, p.2; LT, 4 September 1868, p.2.

51 The charges against Brocher and his trial can be followed in the EP, September, November and December 1896, January and March 1897. His execution is reported in EP, 21 April 1897, p.5.

52 LT, 3 March 1864, p.5. Johnston's treatise on the powers of magistrates and other court officers, published in 1864, made the same point. Johnston, *The New Zealand Justice of the Peace,* Appendix 2.

53 LT, 8 March 1864, p.5.

54 ODT, 3 June 1864, p.5.

55 Judge's Notes 1864–1873, C.W. Richmond Papers, Vol. 1, pp.48–53, Victoria University of Wellington Library.

56 ODT, 9 December 1864, p.4, 13 December 1864 p.5, 22 December 1865, p.4; WI, 28 October 1865, p.5; Lambert v Johnstone [sic], 5 October 1864, Criminal Trial Files, DAAC 251/15, ANZ, Dunedin.

57 For example, despite having a marriage certificate from England, the police withdrew bigamy charges against William James when they could not produce witnesses to prove the identity of those named in the certificate. ODT, 5 June 1868, p.4; LT, 9 June 1868, p.3, 17 June 1868, p.3.

58 *Press*, 4 July 1872, p.3; *Star*, 11 July 1872, p.2. Antill and Kavanagh were transported convicts and gained permission to marry in Tasmania in 1853. After they gained their freedom, they came to New Zealand and settled at Woodend. In 1869 Antill visited his home town of Leicester and married again. When he returned to Canterbury, Margaret took him to court for maintenance and bigamy. After Margaret died in 1877, Antill remarried his second wife in New Zealand.

59 ODT, 25 December 1889, p.2, 27 December 1889, p.2; Supreme Court Criminal Trial Files September 1890, DAAC D256/294; Depositions, 27 June 1890, Supreme Court Dunedin-Indictments, September Sittings 1890, DAAC D256/440, ANZ, Dunedin.

60 Criminal Record Book, DAAC D437/10 19450; Supreme Court Criminal Trial Files September 1890, DAAC D256/294, ANZ, Dunedin; ODT, 28 June 1890, p.4, 2 September 1890, p.4; *Press*, 23 October 1895, p.1.

61 *Star*, 31 January 1876, p.2; *Press*, 1 February 1876, p.3; Griffin v. Coyne, NZH, 30 October 1868, p.5.

62 AS, 17 March 1891, p.5; *Taranaki Herald*, 16 April 1891, p.3, 17 April 1891, p.2; Christine Clement and Judith Johnston, *Women of South Taranaki – Their Stories. Nga Wahine Toa O Taranaki Tonga — O Ratou Korero*, Hawera Suffrage Centennial Local History Group, Hawera, 1993, p.191. Mary Ann Mathieson was charged as she had married both times according to European law. Most Māori marriages in the nineteenth century were customary marriages and were not subject to the law on bigamy.

63 LT, 8 March 1864, p.5.

64 NZH, 3 October 1882, p.3, 14 October 1882, p.5, 19 January 1883, p.3; Judge Gillies Criminal Notebooks, 1 October 1882–7, April 1884, pp.3–5, BBAE A 304 24990 Box 177/ 256, ANZ, Auckland.

65 *Press*, 15 September 1871, p.3, 8 March 1872, p.3.

66 For details of this case see *Star*, 2 February 1874, p.2, 10 April 1874, p.2; *Press*, 3 February 1874, p.2, 11 April 1874, p.5.

67 *Press*, 13 April 1874, p.2.

68 Notices of Intention to Marry, 24 April 1874, BDM 20/19, 573/3208, ANZ, Wellington; Births, Deaths and Marriages Online, Marriage Index 1874/9049.

69 *Star*, 8 February 1884, p.3, 19 April 1884, p.3; *Press*, 19 April 1884, p.3.

70 *Star*, 9 September 1886, p.3, 31 March 1887, p.3.

71 The records show that both were under 21 at the time of their first marriage. Underage applicants for a marriage certificate could state that there was no one in the colony able to give consent, and this formula was used frequently and, in some cases, fraudulently.

72 WH, 2 May 1882, p.2.

73 *Star*, 22 May 1895, p.3; *Press*, 10 June 1895, p.3, 19 November 1895, p.3.

74 *Press*, 4 July 1876, p.3.

75 *Star*, 3 November 1884, p.3, 7 November 1884, p.3, 5 January 1885, p.3.

76 *Poverty Bay Herald*, 20 September 1884, p.2, 22 September 1884, p.2, 8 October 1884, p.2, 8 December 1884, p.2.

77 ODT, 4 January 1872, p.2, 18 January 1872, p.2.

78 Marion M. H. Webb, 20 May 1872, Petition, Justice Department, JI, 126/u, 1872/1394, ANZ, Wellington.

79 Judge Gillies Criminal Notebook, 8 April 1884–8 January 1885, BBAE a 304/24990 Box178/257, ANZ, Auckland; NZH, 31 May 1884, p.5, 3 July 1884, p.6; AS, 16 June 1884, p.2.

80 WH, 6 October 1891, p.2; EP, 8 December 1891, p.2.

81 ODT, 25 June 1875, p.3, 7 July 1875, p.3; *Otago Witness*, 10 July 1875, p.9; Supreme Court Criminal Trial Files, DAAC D256, Box 268, No.13, ANZ, Dunedin.

82 *Press*, 31 January 1871, p.2; *Timaru Herald*, 11 April 1876, p.3; District Court of Timaru and Oamaru Criminal File Eliza Emma Thorpe v John Millichamp, CAHY CH24, Box 211, ANZ, Christchurch; Divorce Files, CAHX CH208 3007, Box 2, 22/1881, ANZ, Christchurch; EP, 22 November 1881; see *Ashburton Guardian*, 21 February 1912, p.4 for obituary of John Millichamp.

83 *Star*, 15 December 1875, p.2.

84 *Press*, 4 April 1876, p.3. The judge seems to have been contradicting his own views. His own treatise stated that it was the duty of a constable to apprehend persons he saw committing a felony, or when a reasonable charge had been made that a felony had been committed or when a person was suspected of committing a felony. Johnston, *The New Zealand Justice of the Peace*, pp.408–9.

85 Shearman to Provincial Secretary, 12 April 1876, Canterbury Provincial Council, CAAR CH287 19936, Box CP 170, ICPS 749/1876, ANZ, Christchurch.

86 *Press*, 13 April 1876, p.2.

87 WH, 8 January 1879, p.2, 9 January 1879, p.2.

88 Goodall to Shearman, 11 January 1879, Police Department, PI 88, 1879/369, ANZ, Wellington.

89 G[eorge] S[toddart] W[hitmore], Minute, 20 February 1879, ibid.

90 Stout, Minute, 21 February 1879, ibid.

91 WH, 20 April 1882, p.2. By 1879 the police force had been centralized and the application of national policies was at least theoretically possible.

92 AS, 8 July 1880, p.3. Interestingly, references to bigamy as a crime against God, which were made regularly up to the 1860s, vanish from the 1880s.

93 *Daily Telegraph*, 14 June 1881, p.2.

94 EP, 4 March 1896, p.6.

95 *Press*, 31 May 1898, p.3.

96 EP, 27 April 1867, p.2, 4 June 1867, p.2, 19 November 1878, p.2; *Star*, 23 April 1870, p.3, 9 June 1870, p.3, 3 September 1872, p.3, 17 September 1873, p.2, 19 September 1873, p.2; *Press*, 7 October 1873, p.3; WH, 3 August 1895, p.2, 28 August 1895, p.3, 2 September 1895, p.3.

97 Rebecca Probert, *The Changing Legal Regulation of Cohabitation: From Fornicators to Family, 1600–2010*, Cambridge University Press, Cambridge, 2012; Rebecca Probert, ed., *Cohabitation and Non-Marital Births in England and Wales, 1600–2012*, Palgrave Macmillan, Houndmills, 2014.

98 EP, 6 June 1893, p.2.